

DEC 18 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

CRAIG CALKINS,

Plaintiff - Appellant,

v.

DANIEL BROWN; et al.,

Defendants - Appellees.

No. 02-35908

D.C. No. CV-01-01180-BR

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Argued and Submitted December 5, 2003
Seattle, Washington

Before: KLEINFELD, GOULD, and TALLMAN, Circuit Judges.

Craig Calkins appeals the district court's summary judgment dismissal of his § 1983 First Amendment claim and his state-law whistleblower and wrongful discharge claims. We affirm the district court.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Calkins's § 1983 claim fails because the record does not establish a causal nexus between protected speech, if there was any, and his demotion.¹ The whistleblower action is barred because it was not brought within the 90-day statute of limitations, as required by the 1999 version of Oregon Revised Statutes which governs this case.² The wrongful discharge claim fails because Calkins does not state a prima facie case,³ and therefore we need not decide whether Draper v. Astoria School District applies.⁴

AFFIRMED.

¹ Coszalter v. City of Salem, 320 F.3d 968, 977 (9th Cir. 2003).

² Or. Rev. Stat. §§ 659.510, 659.530 (1999), superseded by Or. Rev. Stat. §§ 659A.203, 659A.215; see Or. Rev. Stat § 659A.215 (note).

³ McGanty v. Staudenraus, 901 P.2d 841, 851–57 (Or. 1995).

⁴ Draper v. Astoria Sch. Dist. No. 1C, 995 F.Supp. 1122, 1126–32 (D. Or. 1998), overruled in part by Rabkin v. Or. Health Sciences Univ., No. 02-35077, 2003 WL 22770070 (9th Cir. Nov. 24, 2003).